

CONFIDENTIAL BUSINESS INFORMATION

Ledwith, Cara L.

From: Miller, Jeff
Sent: Monday, October 03, 2011 11:50 AM
To: wsgumb-lteclaims@acegroup.com
Cc: Ledwith, Cara L.; Peterson, Lisa
Subject: Lower Duwamish Waterway Superfund Site - International Insurance Company - forwarding tender letters
Attachments: 12-22-10 International 1984-1985 Notice - EU.pdf; 12-21-10 International 1984-1985 Notice - EU.pdf

To ACE Westchester:

On behalf of Kaiser Cement Corporation, and separately on behalf of Kaiser Gypsum Company, Inc., we put International Insurance Company on notice of claims against it at the Lower Duwamish Waterway Superfund Site last December (see attached).

We have not yet received acknowledgment of the tender letters. Please acknowledge receipt of Kaiser Cement's December 22, 2010 notice letter and Kaiser Gypsum's December 21, 2011 notice letter and state the coverage position of International Insurance Company.

Thank you for your assistance.

Jeff

Jeff Miller

MILLER NASH LLP

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Steven F. Hill, P.C.
Admitted in Washington and Oregon
steve.hill@millernash.com
(360) 619-7004 direct line

December 22, 2010

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

International Insurance Company
As Assumed by Westchester Fire Insurance Company
c/o ACE USA
1601 Chestnut Street
Philadelphia, PA 19101

Subject: Insured: Kaiser Cement Corporation
Insurer: International Insurance Company
Policy No. (Periods): 523-317273 (05/01/84-04/01/85)
Claim: Lower Duwamish Waterway Superfund Site

Dear Ladies and Gentlemen:

We represent Kaiser Cement Corporation, now known as Hanson Permanente Cement, Inc. ("KCC"), in connection with the necessary investigation that it is undertaking in order to respond to the United States Environmental Protection Agency's ("EPA") February 19, 2010 request for information served on KCC pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9604(e). Section 104(e) of CERCLA obligates KCC to respond to EPA's multi-part questions relating to KCC's historical ownership and operations on riparian property that KCC formerly owned along the Lower Duwamish Waterway ("LDW") in Seattle, Washington. The LDW is a waterway that has been listed on the CERCLA National Priorities List as a federal Superfund site (the "LDW Superfund Site") due to the release or substantial threat of release of hazardous substances in or around the waterway. Compliance with the EPA's Section 104(e) information request is required by law, and failure to respond may subject KCC to an EPA enforcement action and civil penalties of up to \$37,500 per day.

KCC is in the process of investigating its historical connection with the LDW. To date, we have only been able to confirm that KCC owned property and conducted cement operations at two separate locations along the LDW, including 5906 West Marginal Way S.W. (the "Westside Property") and 5975 East Marginal Way

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S. (the "Eastside Property") in Seattle, Washington (collectively referred to as the "Seattle Properties"). In addition, our preliminary review of historical documents, including publicly available real property records, has confirmed the following:

- KCC purchased a portion of the Eastside Property in June 1944. KCC constructed a cement distribution facility on the Eastside Property, which started operation in approximately October 1946. The facilities on the Eastside Property that were owned and operated by KCC included a dolphin pier, silos, storage facilities, a sacking plant, railroad spurs, truck loading accommodations, and an office building.
- In December 1953, KCC sold a portion of the Eastside Property to Kaiser Gypsum Company, Inc.
- In October 1958, KCC purchased additional real property, including a water inlet, from Commercial Waterway District No. 1, in order to expand the Eastside Property.
- In January 1965, KCC entered into a long-term lease with the Port of Seattle (the "Port") for the Westside Property. A condition of the lease required KCC to build a cement manufacturing and distribution facility. This facility was constructed and began operations in 1967. KCC entered into a real estate contract with the Port in May 1969. By fulfillment deed, KCC acquired fee title in the Westside Property on September 17, 1973.
- On October 1, 1985, KCC sold all of its interest in the remainder of the Eastside Property to Riedel International, Inc.
- On April 14, 1987, KCC sold all of its interest in the Westside Property to Lone Star Industries, Inc.

KCC has not located any former officers or employees of KCC with knowledge of its operations at the Seattle Properties. On June 23, 2010, KCC filed a preliminary response to EPA's Section 104(e) information request based on the information we were able to gather, including the information recited above, from real property records, tax records, and certain historical documents that were previously gathered by KCC's defense counsel during KCC's defense of asbestos litigations.



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We understand that at or around the time that it ceased active business operations, KCC collected certain of its business records and sent them to storage facilities in California. These documents cover a variety of historical information, and are believed to contain documents related to historical KCC operating facilities in multiple states, including Washington. KCC was able to locate certain indexes of the California documents, but these indexes were not created with EPA's Section 104(e) information request in mind. Therefore, it is very difficult to determine the extent of documents that might contain information responsive to EPA's Section 104(e) information request or the scope of document review that might be necessary to search for such documents. We do know, however, that there are approximately 10,000 boxes of historic documents stored in California.

During preparation of KCC's response to the Section 104(e) information request, we contacted EPA and informed EPA that these historical records existed. We also indicated to EPA that, given the volume of these historical documents, we would not be able to review them by the deadline EPA had imposed for KCC's response. EPA requested that KCC file a preliminary response to the Section 104(e) information request by its deadline using the information and documents readily available to KCC. EPA further requested that KCC agree to conduct a thorough review of the historical records and supplement its response to the Section 104(e) information request in the next few months.

At this time, our office has conducted a preliminary review of the available box indexes for the California documents and it is clear that some boxes may contain information responsive to EPA's Section 104(e) information request. In order to fully respond to EPA's Section 104(e) information request and avoid the imposition of liability on KCC for failing to have done so, counsel for KCC will need to conduct extensive searches of the California documents over the next few months and will need to supplement KCC's preliminary response, as appropriate, based on any responsive information identified as a result of such searches. In sum, KCC needs to undertake the process of conducting an investigation of the available information in order to complete its legal obligation to respond to EPA's Section 104(e) information request.

At this time, we do not know if KCC may have contributed to any contamination of the LDW Superfund Site. But as a former owner of property within the boundaries of the LDW Superfund Site, KCC is potentially liable for any contamination of the LDW Superfund Site that may have occurred during KCC's ownership and operation of the Seattle Properties. In order to assess its potential liability and to comply with its legal obligation to respond to EPA's Section 104(e)



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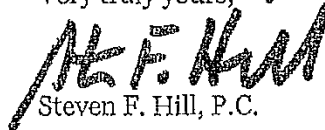
information request, KCC is obligated to complete its review of the historical corporate documents stored in California.

Based on our records, International Insurance Company ("International") sold excess and/or umbrella liability insurance policies to KCC (formerly known as Permanente Cement Company and Kaiser Cement & Gypsum Corporation), naming KCC as an additional insured, during the period from 1984 through 1985. The specific International policy that we have located to date is listed above.

The EPA's Section 104(e) information request requires KCC to defend itself from any claims that it is a liable party for the contamination discovered in the LDW Superfund Site. Should further review of historical records establish a basis for KCC's potential liability for contamination of the LDW Superfund Site, we expect that EPA will name KCC as a potentially responsible party for the LDW Superfund Site. Accordingly, on behalf of KCC, we hereby put International on notice of this potential claim and request that International provide coverage for this claim and any other claims against KCC that are related to the LDW Superfund Site.

If you have any questions, please e-mail me at steve.hill@millernash.com or call me at 360.699.4771.

Very truly yours,



Steven F. Hill, P.C.

cc: Susan M. Breen-Quinn

039391-0008/VANDOC5:50144708.1

KG2005411

7160 3901 4848 8114 0288

TO:
International Insurance Company
As Assumed by Westchester Fire Ins. Co.
c/o ACE USA
1601 Chestnut Street
Philadelphia, PA 19101

SENDER: MN/Hill/Ledwith

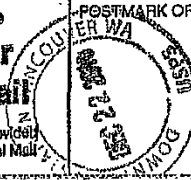
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PS Form 3800, January 2005

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December 21, 2010

**BY CERTIFIED MAIL
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International Insurance Company
As Assumed by Westchester Fire Insurance Company
c/o ACE USA
1601 Chestnut Street
Philadelphia, PA 19101

Subject: Insured: Kaiser Gypsum Company, Inc.
Insurer: International Insurance Company
Policy No. (Periods): 523-317273 (05/01/84-04/01/85)
Claim: Lower Duwamish Waterway Superfund Site

Dear Ladies and Gentlemen:

We represent Kaiser Gypsum Company, Inc. ("KGC"), in connection with the necessary investigation that it is undertaking in order to respond to the United States Environmental Protection Agency's ("EPA") February 19, 2010 request for information served on KGC pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9604(e). Section 104(e) of CERCLA obligates KGC to respond to EPA's multi-part questions relating to KGC's historical ownership and operations on riparian property that KGC formerly owned along the Lower Duwamish Waterway ("LDW") in Seattle, Washington. The LDW is a waterway that has been listed on the CERCLA National Priorities List as a federal Superfund site (the "LDW Superfund Site") due to the release or substantial threat of release of hazardous substances in or around the waterway. Compliance with the EPA's Section 104(e) information request is required by law, and failure to respond may subject KGC to an EPA enforcement action and civil penalties of up to \$37,500 per day.

KGC is in the process of investigating its historical connection with the LDW. To date, we have only been able to confirm that KGC owned property and operated a gypsum plant at 5931 East Marginal Way S. in Seattle, Washington on the eastern side of the LDW (the "KGC Property") from 1952 to 1978. To date, KGC has not

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located any former officers or employees of KGC with knowledge of its operations at the KGC Property. On June 23, 2010, KGC filed a preliminary response to EPA's Section 104(e) information request based on the information we were able to gather from real property records, tax records, and certain historical documents that were previously gathered by KGC's defense counsel during KGC's defense of asbestos litigations.

We understand that at or around the time that it ceased active business operations, KGC collected certain of its business records and sent them to storage facilities in California. These documents cover a variety of historical information, and are believed to contain documents related to historical KGC operating facilities in multiple states, including Washington. KGC was able to locate certain indexes of the California documents, but these indexes were not created with EPA's Section 104(e) information request in mind. Therefore, it is very difficult to determine the extent of documents that might contain information responsive to EPA's Section 104(e) information request or the scope of document review that might be necessary to search for such documents. We do know, however, that there are approximately 10,000 boxes of historic documents stored in California.

During preparation of KGC's response to the Section 104(e) information request, we contacted EPA and informed EPA that these historical records existed. We also indicated to EPA that, given the volume of these historical documents, we would not be able to review them by the deadline EPA had imposed for KGC's response. EPA requested that KGC file a preliminary response to the Section 104(e) information request by its deadline using the information and documents readily available to KGC. EPA further requested that KGC agree to conduct a thorough review of the historical records and supplement its response to the Section 104(e) information request in the next few months.

At this time, our office has conducted a preliminary review of the available box indexes for the California documents and it is clear that some boxes may contain information responsive to EPA's Section 104(e) information request. In order to fully respond to EPA's Section 104(e) information request and avoid the imposition of liability on KGC for failing to have done so, counsel for KGC will need to conduct extensive searches of the California documents over the next few months and will need to supplement KGC's preliminary response, as appropriate, based on any responsive information identified as a result of such searches. In sum, KGC needs to undertake the process of conducting an investigation of the available information in order to complete its legal obligation to respond to EPA's Section 104(e) information request.

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Page 3

At this time, we do not know if KGC may have contributed to any contamination of the LDW Superfund Site. But as a former owner of property within the boundaries of the LDW Superfund Site, KGC is potentially liable for any contamination of the LDW Superfund Site that may have occurred during KGC's ownership and operation of the KGC Property. In order to assess its potential liability and to comply with its legal obligation to respond to EPA's Section 104(e) information request, KGC is obligated to complete its review of the historical corporate documents stored in California.

Based on our records, International Insurance Company ("International") sold excess and/or umbrella liability insurance policies to KGC or its parent Hanson Permanente Cement, Inc. (formerly known as Kaiser Cement & Gypsum Corporation and Kaiser Cement Corporation), naming KGC as an additional insured, during the period from 1984 through 1985. The specific International policy that we have located to date is listed above.

The EPA's Section 104(e) information request requires KGC to defend itself from any claims that it is a liable party for the contamination discovered in the LDW Superfund Site. Should further review of historical records establish a basis for KGC's potential liability for contamination of the LDW Superfund Site, we expect that EPA will name KGC as a potentially responsible party for the LDW Superfund Site. Accordingly, on behalf of KGC, we hereby put International on notice of this potential claim and request that International provide coverage for this claim and any other claims against KGC that are related to the LDW Superfund Site.

If you have any questions, please e-mail me at steve.hill@millernash.com or call me at 360.699.4771.

Very truly yours,

Steven F. Hill, P.C.

cc: Susan M. Breen-Quinn

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7160 3901 7848 8113 9794

TO:
International Insurance Company
As Assumed by Westchester Fire Ins. Co.
c/o ACE USA
1601 Chestnut Street
Philadelphia, PA 19101

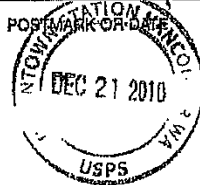
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REFERENCE: 030391-0008/0009

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